THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25186 of 2006

Dated:13.03.2007

Between:

Darga Hazrat Sondey Shaheed (RH).

…Petitioner

and

A.P.State Wakf Board and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.25186 of 2006

ORDER:

Darga Hazrat Sondey Shaheed (RH) Moti Masjid and Grave Yard (hereinafter referred to as 'Darga') is the petitioner herein, which is represented by its President, Syed Ahmed Shareef. The President and ten others were appointed as the Managing Committee of the Darga. The term of the Committee is two years. Respondents 3 and 4 filed an application before the first respondent seeking appointment as Mutawallies of Darga. They claimed that their father, Mohd.Khalender, was Shikmidar with equal share in the Institution along with Mohd.Qasim, S/o.Budan Saheb, that Mohd.Qasim and Mohd.Khalender expired, that Mohd.Qasim said to have left only one son by name Mohd.Tajuddin and respondents 3 and 4 herein are only the sons of Mohd.Khalender, the second half share holder. The son of Mohd.Qasim has got no objection for granting towliath in the names of respondents 3 and 4 herein. After examining the petition submitted by respondents 3 and 4, the first respondent passed orders on 21.11.2006 appointing them as joint Mutawallies. While doing so, the first respondent also observed that the Managing Committee appointed by proceedings dated 20.10.2005 will automatically cease to function. Aggrieved by the said proceedings, the present Writ Petition is filed.

At the preliminary stage itself, the Wakf Board filed counter affidavit and respondents 3 and 4 have also filed a counter affidavit. A

perusal of these counter affidavits would show that there have been disputes between the members of the family claiming towliath on one hand and Managing Committee and the third respondent on the other hand. There are also allegations made that the President of the Darga is not qualified. It is also the case of the respondents that pursuant to the impugned orders, all the members of the Managing Committee, except the President, submitted their resignations to the Chief Executive Officer and also handed over administration and possession to respondents 3 and 4. This is, however, denied.

As there are factual disputes regarding the eligibility of the President and also factual disputes regarding the procedure adopted by the first respondent before appointing respondents 3 and 4, this Court is not inclined to adjudicate the matter, especially, when it is alleged that respondents 3 and 4 took charge from the members of the Managing Committee for administering the Wakf. Further, any order or proceedings of Wakf Board can be agitated before the Wakf Tribunal under Section 83(2) of the Wakf Act, 1995, as laid down by this Court in **M.Bikshapathi v. Government of Andhra Pradesh**[1] and **Allauddin Charities and Zakath Wakf v. Hameed Ali**[2]. This is an effective alternative remedy. The petitioner is given liberty to avail the remedy.

Therefore, without expressing any opinion on the merits of the case and giving liberty to the petitioner to approach the Wakf Tribunal, the Writ Petition is disposed of. No costs.

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(V.V.S.RAO, J)

13.03.2007
vs

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[1] 1999 (6) ALD 270 (DB)

[2] 2002 (1) ALD 67 (DB)